STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

SBC Communications, Inc., SBC Delaware Inc., Ameritech Corporation, Illinois Bell Telephone Company d/b/a Ameritech and Ameritech Illinois Metro, Inc.	:	
	:	**98-0555**
Joint Application for approval of the reorganization of Illinois Bell Telephone Company d/b/a Ameritech Illinois and the reorganization of Ameritech Illinois Metro, Inc., in accordance with Section 7-204 of the Public Utilities Act and for all other appropriate relief.	:	

AMENDATORY ORDER ON REHEARING

By the Commission:

On September 23, 1999, the Illinois Commerce Commission ("Commission") entered an Order in the above captioned Docket No. 98-0555 approving, with conditions, the proposed reorganization of Ameritech Illinois as was set out in the verified Joint Petition.

Thereafter, Applications for Rehearing ("Applications") were timely filed by (1) SBC Communications Inc., Ameritech Corporation, and Illinois Bell Telephone Company, d/b/a Ameritech Illinois ("Joint Applicants"); (2) AT&T Communications of Illinois, Inc., MCI WorldCom, Inc., Sprint Communications L.P., and 21st Century Telecom of Illinois, Inc. ("Joint Movants"); (3) McLeod USA Telecommunications Services, Inc. ("McLeod"); (4) the People of the State of Illinois ("AG"); (5) the Cook County States Attorney's Office ("Cook County"); (6) the Citizens Utility Board ("CUB"); and (7) the Neighborhood Learning Network and DSSA ("DSSA").

Among the points raised in these Applications, were several requests seeking a clarification of the Order. Also, on November 4, 1999, Staff filed a Motion to Reopen for the Purposes of Clarification of the Order. Our discussions of these matters occurred over several days and concluded with rulings reflected in a Minute Order entered on November 15, 1999.

Consistent with our rulings on November 15, 1999, which disposed of the individual Applications for Rehearing, as well as our rulings on the Staff Motion, we enter this Amendatory Order.

The Applications for Rehearing

1. In order to clarify the Commission's decision regarding the penalties payable due to failure to implement performance measures, a point raised by the Joint Applicants (and also included in Staff's motion), we amend the Order in several parts as follows:

> Order at 220-221:
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> If the Joint Applicants fail to implement all 122 performance measurements, minus those waived by the Commission, within 300 days from the merger closing, they shall pay a $26.25 million penalty distributed to CLECs on the basis of access lines and $3.75 million to the Community Technology Fund described below. In addition, (a) for any performance measurement of the 122 performance measurements that the Joint Applicants fail to implement or (b) for any performance measurement of the 122 performance measurements which is implemented and the Joint Applicants fail to achieve the requisite performance as required by the measurement, the Joint Applicants shall pay a liquidated damage amount not to exceed $90 million. For any performance measurement which the Joint Applicants fail to implement, the amount of the liquidated damage shall be based on a pro-rata distribution methodology determined by the Commission. For any performance measurement for which the Joint Applicants fail to achieve the requisite performance, the amount of the liquidated damage payments shall be made according to the Joint Applicants per measure cap as a guide for determining the value of each missed measurement and/or standard/benchmark. One hundred and fifty days after the Merger Closing Date, the Joint Applicants shall submit to the Commission for approval a written report detailing the timeline for implementing each of the performance measures, associated standards/benchmarks, and remedies, or an explanation of why SBC/Ameritech contend that implementation any particular measurement, standard/benchmark, or remedy is infeasible. The Commission may grant waivers from certain measurements, standards/benchmarks, and remedies, and shall determine the value of each missed measurement, and standard/benchmark in the event that SBC/Ameritech does not implement a particular measurement or standard/benchmark, or that it does not seek a waiver from such a requirement within 300

days of the Merger Closing Date. The Commission shall look to the Joint Applicants per measure cap as a guide for determining the value of each missed measurement and/or standard/benchmark. Liquidated damages for failure to implement the performance measures shall not exceed $90 million based upon the pro-rata distribution methodology to be determined by the Commission. (SBC/Ameritech, Attachments 1 and 2 to Proposed Order on Re-Opening, p. 9). Our interest is not to penalize the company but rather to have compliance with our order. We have left, largely intact, the Joint Applicants collaborative proposal for the implementation of performance measurements and it is our ardent hope that the process will be productive, cooperative, and result in a thorough set of performance monitoring tools. Thereafter, Joint Applicants shall still be liable for incident based liquidated damages up to an annual cap of $90 million.

Order at 257-259:

Within 7 days of merger closing, Joint Applicants should provide the Commission with a written list of the 122 ~~79~~ benchmarks and standards they will implement in Illinois. They should also describe which standards and benchmarks may be problematic to implement and a detailed justification for such a determination. Within 300 days following the Merger Closing Date, Ameritech Illinois will implement in Illinois all of the 122 performance measurements and related standards/benchmarks except those waived by the Commission pursuant to paragraphs 4 and 5 above. Within 310 days following the Merger Closing Date, SBC/Ameritech will file a letter in this docket and serve such letter upon all CLECs with whom Ameritech Illinois has an approved interconnection agreement attesting whether or not Ameritech Illinois has met this commitment. Such attestation is subject to review by the Commission. If SBC/Ameritech attest that they did not, or the Commission finds that they did not implement in Illinois all of the 122 performance measurements and related standards/benchmarks within of 300 days following the Merger Closing Date, SBC/Ameritech will make a payment of $30 million, as follows, as well as a payment calculated as a pro rata portion of the $90 million for failure to implement the benchmarks:

a. $26.25 million, as payments to CLECs providing end-user service within Ameritech Illinois' service area as of the date 300 days following the Merger Closing Date as follows:

A. A CLEC's Access Lines, for each CLEC, shall be its total number of access lines in service, including, without limitation, residence access lines, business access lines and end-user trunks, and ISDN lines, whether resold or not, measured as of the date 300 days following the Merger Closing Date, within Ameritech Illinois' current service area. Each CLEC that desires to receive any of the $26.25 million in payments must provide to the Commission Staff, no later than 330 days following the Merger Closing Date, a report identifying the number of such lines and trunks for that CLEC. Such report shall separately identify: i) the number of resold Ameritech Illinois access lines; ii) the number of unbundled loops purchased from Ameritech Illinois; and iii) all other such lines and trunks in service within Ameritech Illinois' current service area. Each CLEC submitting such a report will certify to the Commission Staff the accuracy of such report. The Commission Staff will notify each qualifying CLEC of its pro-rata share of the $26.25 million. Thirty days after the date of such notice, the Commission Staff will provide notice to SBC/Ameritech as to the appropriate disbursement of the $26.25 million. Within 60 days of receiving this notice from the Commission Staff, Ameritech Illinois will issue checks totaling $26.25 million made payable to each qualifying CLEC for the disbursement amounts listed in Staff's notice to Ameritech Illinois.

B. Total CLEC Access Lines shall be the sum of A. above for all qualifying CLECs submitting a timely report.

C. A CLEC's Pro-Rata Share shall be the ratio of A. above for that CLEC, divided by B.

D. Each affected CLEC within Ameritech Illinois' current service area shall receive a payment equal to $26.25 million multiplied by the CLEC's Pro-Rata Share; and

b. $3.75 million to the Community Technology Fund described below.

c. A pro rata portion of the $90 million to be determined by the Commission. This determination shall depend upon the nature of the performance measurements and related standards/benchmarks which the Joint Applicants fail to implement.

2. In order that the Joint Applicants right to seek a waiver as established by the Order not be compromised by strict and undue adherence to the timelines for implementation set out therein, we are also adding certain clarfying language:

Order at 257:

Within 150 days following the Merger Closing Date, the task force will complete its initial review of performance measurements/standards/benchmarks/remedies with the collaborative participants. One hundred and fifty days after the Merger Closing Date, the Joint Applicants shall submit to the Commission for approval a written report detailing the timeline for implementing each of the performance measures, associated standards/benchmarks, and remedies, or an explanation of why SBC/Ameritech contend that implementation any particular measurement, standard/benchmark, or remedy is infeasible. The Commission may grant waivers from certain measurements, standards/benchmarks, and remedies, and shall determine the value of each missed measurement, and standard/benchmark in the event that SBC/Ameritech does not implement a particular measurement or standard/benchmark, or that it does not seek a waiver from such a requirement within 300 days of the Merger Closing Date. For any standards/benchmarks or remedies for which the Joint Applicants request a waiver, the time for implementation shall be tolled accordingly. A Commission Order denying a waiver shall restart the running of the remaining 300 day implementation period. Joint Applicants shall not be deemed to be out of compliance with a standard/benchmark or remedy for which a waiver has been requested unless the Commission issues an order denying the waiver and the 300 days from closing as tolled by the filing of a waiver request has run. In addition to the $30 million payment described below, liquidated damages for failure to implement the performance measures shall not exceed $90 million and shall be based on the pro rata distribution methodology to be determined by the Commission.

3. In the course of its deliberations on the Joint Applicants' application, the Commission ascertained that there is record support for the proposition that the updated LRSIC studies need not be put on the same schedule as the TELRIC and

shared and common cost studies. In addition, we considered proper the language changes urged by the Joint Movants in their application. This leads us to modify the order accordingly.

Order at 124:

> "…We are of the opinion and will require, however, that within six months from the date of merger approval, the merged company should submit updated TELRIC and shared and common cost studies. LRSIC studies should begin to be updated within this period in accordance with the priorities to be agreed upon between Ameritech Illinois and Staff. We will use these updated studies in the merged Company's request for rate rebalancing, and any other investigations as deemed appropriate. However, Docket No. 98-0396 should proceed using the current TELRIC methodology. Further, to the extent timing permits, the new TELRICs submitted by the Joint Applicants within six months should include the rates determined in Docket 98-0396.

Order at 242; Condition No. (12):

> "LRSIC & TELRIC – Ameritech Illinois will file revised TELRIC and shared and common cost studies with the Chief Clerk of the Commission within six months after the last regulatory approval of the proposed reorganization. Ameritech Illinois will begin to file revised LRSIC cost studies with the Chief Clerk of the Commission within six months after the last regulatory approval of the proposed reorganization. It is noted that Staff is willing to work with Ameritech Illinois to establish a priorities list for such updates to facilitate completion within 12 months. The Commission will utilize the updated studies in its analysis of the Company's request for rate rebalancing and in any other investigations it deems appropriate. However, Docket No. 98-0396 should proceed using the current TELRIC methodology. Further, to the extent timing permits, the new TELRICs submitted by the Joint Applicants within six months should include the rates determined in Docket No. 98-0396.

4. During our deliberations on the Joint Applicant's pleading, the Commission recognized that the 24 hour information availability requirement was a matter better addressed in the collaborative process we established under Condition No. 29 of the Order. Hence, we clarify the Order in this respect.

Order at 197:

> Specifically, Joint Applicants shall ensure that OSS systems, once modified in the three-phase process to interface with CLECs, provide the following information in an online format to be available at times decided upon in the collaborative process:

5. Our attention has been directed to the fact that certain of the timeframes set out in the Order for providing merger-related savings and costs information are inconsistent with both the operations of the Joint Applicants accounting systems and with the annual filing process itself. We had not intended such conflict and thus modify the language in order to maintain consistency between the timelines and systems.

> Order at 149:
>
> To be specific, Ameritech Illinois is required to track its share of all actual merger - related savings and all merger - related costs, as herein defined, separately for the period beginning on the date that the merger is consummated and ending on December 31, 1999.

6. Consistent with granting the AG, Cook County and CUB applications, in part, the Order will be amended in the following respects in order to clarify the meaning of merger "costs" to be excluded.

> Order at 147:
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> As for the meaning of "costs", the Commission agrees with Staff that none of the merger "transactional costs" shall constitute legitimate costs for present purposes. "Transactional costs" shall be defined as those costs and expenses incurred in connection with the merger transaction and shall include but not be limited to fees and expenses of financial advisors and consultants and lawyers; filing fees; proxy costs; the costs of securing regulatory approval of the transaction; employee retention payments; employee change in control payments; employee severance costs; employee relocation costs; the costs of third party auditing or technical assistance necessary to comply with the conditions imposed by the Commission in this Order; the administrative costs associated with the Consumer Education and Community Education funds; and the costs of penalties should conditions and benchmarks imposed by the Commission in this Order not be met. It is only these costs directly associated with AI's provision of service which qualify under Section 7-204(c). Hence, we agree with Staff's position to allow recovery of only those costs directly associated with the utility's operation.
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> Order at 149:

> "To be specific, Ameritech Illinois is required to track its share of all actual merger-related savings and all merger-related costs, as herein defined, separately for the period beginning on the date that the merger is consummated and ending on December 31, 1999. As noted earlier, merger-related costs shall not include "transactional costs".

7. On pages 16-18 of its Application for Rehearing, CUB contends that there is confusion in the Order at 123, 124, regarding the rate freeze applicable to the residential rates under the Price Cap Order in Docket No. 92-0448/93-0239. Since residential rates will not be affected until the next Alt. Reg. Order, the following language in the first full paragraph at page 123 of the Order should be deleted.

Order at 123:

8. On the basis of our discussion over matters raised by the Joint Movants, we amend the Order with the following language.

Order at 183-184.

> …We further order the Joint Applicant's to import the rates agreed to in Texas for the interim version of shared transport (i.e. pre - AIN) until such time as Illinois - specific TELRIC rates can be determined, and are filed and approved by the Commission. In the event, however, that there are rate structure differences, technical infeasibilities, or other significant impediments to the importation of Texas shared transport rates to Illinois, Ameritech shall file currently available, Illinois-specific, TELRIC - based rates for its interim shared transport offering, provided the results are reasonably comparable to the importation of Texas rates. At such time, the interim rates would be subject to a true-up.

Order at 250; Condition No. 28:

> …In addition, the Joint Applicants shall import to Illinois the rates agreed to in Texas for the interim version of shared transport (i.e., pre-AIN) until such time as Illinois specific rates can be determined and are filed and approved by the Commission. In the event, however, that there are rate structure differences, technical infeasibilities, or other significant impediments to the importation of Texas shared transport rates to Illinois, Ameritech shall file currently available, Illinois - specific, TELRIC - based rates for its interim shared transport offering, provided the results are reasonably comparable to the importation of Texas rates.

9. In order to further clarify our denial of DSSA's Application, we are entering a separate order.

Staff Motion for Clarification.

The Staff motion sought clarification of the Order to make explicit that: (a) the Joint Applicants are to recover auditing costs through their shareholders as opposed to the ratepayers; (b) the term "savings" encompasses a reduction in costs and expenses; (c) the administrative costs of the consumer Education and Consumer Technology Funds will not be recovered from ratepayers; (d) the Plan of Record addressing OSS will be evaluated pursuant to the issuance of a Staff Report at the conclusion of the two-week CLEC comment cycle; (e) the $90 million liquidated damages penalty applies to the Joint Applicants' failure to satisfy the performance measures after they have been implemented; and (f) any monthly performance monitoring reports and website information submitted to the Commission will be handled in a confidential manner. No responses to Staff's Motion were filed by any of the parties.

Having carefully reviewed each of the matters raised by Staff, and consistent with our ruling granting the motion, in part, we clarify the language of the Order as follows:

10. Conditions 7 and 19: …The report shall be examined by the Commission and audited with the assistance of a [sic] independent third party selected by the Commission and paid for by AI. AI shall not net third party auditing costs against merger savings or otherwise recover the auditing costs from ratepayers.

    Order at 240 and 243.

    Condition 16(e): Third Party Audit - Conditions concerning updated CAMs are to be complied with by the Joint Applicants and reviewed and audited by the Commission with the assistance of an independent third party selected by the Commission and paid for by the Joint Applicants. The Joint Applicants shall not net third party auditing costs against merger savings or otherwise recover the auditing costs from ratepayers.

    Order at 245.

    Condition 26: …The Commission shall hire at the Joint Applicant's expense, a third party auditor to develop accounting standards and assist the Commission in tracking merger related savings as determined by this order. The Joint Applicants shall not net third party auditing costs against merger savings or otherwise recover the auditing costs from ratepayers.

    Order at 246.

Condition 29: …Phase 3: The Joint Applicants are required to pay for an independent third-party, retained by the Commission, for the technical assistance to the Commission as an arbitrator and to Staff through out the phased OSS implementation process. The Joint Applicants shall not net third party technical costs against merger savings or otherwise recover the auditing costs from ratepayers.

Order at 255.

11. To begin, we agree with the Joint Applicants that the term “savings” in Section 7-204(c)(i) refers to an actual reduction in costs and expenses.

Order at 146.

Looking to the particulars of Section 7-204(c), the plain language doctrine again leads us to construe “savings” as that term is ordinarily understood, namely a reduction in costs and expenses.

Order at 147.

12. With regards to the CEF and CTF, we agree with Staff that it would be inappropriate and discriminatory for ratepayers to bear the costs of these special interest funds. Therefore, we conclude that all costs associated with these funds, including the cost to administer the funds, should not be netted against merger savings or otherwise recovered from ratepayers.

Order at 232.

13. The Plan of Record shall be accepted, or rejected, by this Commission after an expedited (two week) CLEC comment cycle and upon the recommendation of Staff via the issuance of a Staff report evaluating the Plan of Record.

Order at 254.

14. Joint Applicants are ordered to provide monthly performance monitoring reports and website information to the Commission on a disaggregated CLEC by CLEC basis. The Commission will treat this information in a confidential manner.

Order at 259.

IT IS THEREFORE ORDERED that the Order entered by the Commission on September 23, 1999 be, and is hereby amended, as indicated above.

IT IS FURTHER ORDERED that, in all other respects, the Order of September 23, 1999 shall remain in full force and effect.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final, it is not subject to the Administrative Review Law.

By Order of the Commission this 15th day of November, 1999.

Chairman